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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

CHARLES RICHARD PIERCE,

Petitioner,

versus

SHIRLEY JEANETTE PIERCE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF MISSISSIPPI

APPENDIX

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Counsel for Petitioner

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DOCUMENT 1

Opinion of the Mississippi Supreme Court

Charles Richard Pierce
vs.
Shirley Jeanette Pierce

SUPREME COURT OF MISSISSIPPI
Linda Stone, Clerk
Third Floor Gartin Building
450 High Street
P.O. Box 249
Jackson, Mississippi 39205-0249

October 13, 1994

Dale Robinson
Attorney at Law
1901 24th Ave.
Gulfport MS 39501

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 13th day of October, 1994.

Supreme Court Case #91-CA- 0809

Trial Court Case #91512

Charles Richard Pierce

vs.

Shirley Jeannette Pierce

Judgment is Affirmed. Pittman, J., Prather, P.J., Sullivan, Roberts and Smith, JJ., Concur. Lee, P.J., Dissents with Separate Written Opinion joined by Hawkins, C.J., Banks and McRae, JJ. McRae, J.,

Dissents with separate written opinion joined by Lee, P.J.

Appellant is taxed with all costs of this appeal.

Supreme Court Clerk

1wp

ccs: G. Eric Geiss

Harrison County Chancery Clerk

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *

If any original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE SUPREME COURT OF MISSISSIPPI

No. 91-CA-00809

CHARLES RICHARD PIERCE

v.

SHIRLEY JEANETTE PIERCE

EN BANC.

PITTMAN, JUSTICE, FOR THE COURT:

This appeal arises from the Harrison County Chancery Court's judgment dated June 5, 1991, awarding Charles Richard Pierce ("Charles") a divorce from his wife, Shirley Jeanette Pierce ("Shirley"), on the ground of adultery, as well as granting Shirley a fifty percent (50%) interest in and to Charles' military retirement. Because the chancellor's grant of the fifty percent (50%) interest in Charles' retirement pay is supported by adequate findings of fact, we affirm.

Only that aspect of the appeal ***sub judice*** concerning the grant to Shirley of a 50% interest in Charles' military retirement has merit. Consequently, it is not necessary to review all the facts of the case. We need only familiarize ourselves with the law and

those facts which should have been considered by the chancellor in determining the proper division of Charles' military retirement pay.

I. STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Shirley and Charles were married by proxy on May 25, 1967, while Shirley was in Virginia and Charles, then serving with the United States Navy, was stationed in Scotland. During their marriage, Charles was stationed at several locations including Virginia, Scotland, Florida, Maryland, Louisiana, California, Okinawa, Gulfport, Mississippi, and Long Beach Mississippi. Shirley accompanied Charles on some but not all of his assignments. One child was born of the marriage, a daughter, who was over the age of twenty-one (21) and emancipated at the time of the divorce.

On December 15, 1987, Shirley filed a complaint for divorce in the First Judicial District of the Harrison County Chancery Court, seeking a divorce on the grounds of habitual cruel and inhuman treatment or, alternatively, irreconcilable differences. In her complaint, Shirley asked for monetary support in the form of periodic alimony and lump sum alimony. Additionally, she

requested fifty percent (50%) of Charles' military retirement income, asserting that she had a "vested" interest in his retirement pay of at least that amount pursuant to 10 U.S.C. §1408, the Federal Uniformed Services Former Spouses' Protection Act (FUSFSPA). Charles filed a counter complaint, seeking a divorce on the grounds of cruel and inhuman treatment, adultery, desertion, or, in the alternative, irreconcilable differences.

At trial, Shirley amended her complaint to drop the request for periodic or lump sum alimony. However, she retained her right to seek an equitable portion of Charles' retirement pay. Charles' attorney moved for a Rule 41(b) M.R.C.P. dismissal of Shirley's complaint at the conclusion of her case-in-chief. The chancellor granted the motion and dismissed Shirley's cause of action, finding that she failed to prove her grounds for divorce. Charles then presented his evidence.

After all the evidence had been presented, the chancellor granted Charles a divorce from Shirley on the ground of adultery, finding that she had engaged in an adulterous relationship. The chancellor ruled that each party was entitled to the use and possession of the personalty (i.e., household furnishings, tangible

goods, etc.) which they then had in their respective possession. Neither party was awarded attorney's fees. Shirley was not awarded periodic or lump sum alimony; however, she was granted a fifty percent (50%) interest in Charles' military retirement pay, based upon a limited finding (discussed below) concerning that fund.

The chancellor denied Charles' motion for a new trial, or, in the alternative, a judgment notwithstanding the verdict.

Aggrieved by the chancellor's division of his retirement pay, Charles appealed to this Court, assigning the following as error:

1. WHETHER SHIRLEY PIERCE VOLUNTARILY AND SPECIFICALLY RELEASED CHARLES PIERCE FROM ANY CLAIM OF ALIMONY AND FROM HER CLAIM TO 50 PERCENT OF HIS MILITARY RETIREMENT UNDER 10 U.S.C. § 1408.

2. WHETHER THE AWARD OF ONE-HALF (50 PERCENT) OF CHARLES PIERCE'S MILITARY PENSION TO SHIRLEY PIERCE WAS ERROR.

3. WHETHER THERE WAS PROOF OF DOMICILE SUFFICIENT FOR AN AWARD OF ONE-HALF (50 PERCENT) OF THE MILITARY PENSION TO SHIRLEY PIERCE.

II. LAW

1. WHETHER SHIRLEY PIERCE VOLUNTARILY AND SPECIFICALLY RELEASED CHARLES PIERCE FROM ANY CLAIM OF ALIMONY AND FROM

HER CLAIM TO 50 PERCENT OF HIS MILITARY RETIREMENT UNDER 10 U.S.C. § 1408.

Charles contends that Shirley voluntarily and specifically released him from any claim of alimony and that the grant of an interest in his military retirement pay to Shirley is an award of alimony. It is without doubt that Shirley waived Her right to alimony. But, it is equally apparent that she retained her right to seek an equitable division of property, including Charles' military retirement pay. The trial transcript reflects the following colloquy between Shirley's attorney and the chancellor:

> ***We are requesting the Court to grant Mrs. Pierce 50 percent of Mr. Pierce's retirement.*** We are asking the Court to grant Mrs. Pierce the use and possession of all household goods furnishings, utensils and appliances that she had at the time of the separation and grant unto Mr. Pierce the exclusive use, possession and title to all household goods, furnishings, utensils that he had at the date of separation.
>
> We are asking the Court to grant Mrs. Pierce the use and possession of her automobile. We are asking Mr. Pierce to be required to contribute a reasonable sum to Mrs. Pierce for attorney's fees. ***We are not and we waive our right, even if we have any--we're not asking for alimony, either lump sum or periodic anymore. The only thing we think that this Court should do in this particular case is grant Mrs. Pierce, other than what I just asked for, is half of Mr. Pierce's retirement.***

(emphasis added).

As to Charles' assertion that granting Shirley an interest in his pension was an award of alimony, Charles fails to recognize the distinction between a division of property and an award of alimony. A military pension is considered personal property subject to the personal property laws of the forum state, and, in Mississippi, our laws grant chancellors the authority to effect am equitable division of property between spouses after making certain requisite factual findings. This Court has stated that, "[a] spouse's military retirement pension is an asset . . .." ***Southern v. Glenn***, 568 So.2d 281, 283, n.l. (Miss. 1990). We have also said that, "a former spouse's rights *vel non* in his or her former mate's military retirement pension . . . is *subject to the personal property laws* of the states . . ." ***Newman v. Newman***, 558 So.2d 821, 823 (Miss. 1990) (emphasis added).

In further contradiction to Charles' position, we have traditionally recognized four methods of providing support for spouses incident to a divorce, including a division of jointly accumulated property, stating that:

> Our law vests in the chancery courts of this state broad authority to provide for the material needs of spouses incident to a divorce. Over the years our cases have recognized several general forms of aid including,

> but not limited to: (1) periodic alimony, sometimes called permanent or continuing alimony; (b) lump sum alimony or alimony in gross; (c) ***division of jointly accumulated property***; and (d) award of equitable interest in property. There are no clear lines of demarcation between these, nor should there be, and our courts have long been authorized in their sound discretion to use one or several or all in combination.

Bowe v. Bowe, 557 So. 2d 793, 794 (Miss. 1990) (emphasis added).

Most recently this Court, in ***Hemsley v. Hemsley***, 639 So. 2d 909 (Miss. 1994), defined marital property for the purpose of equitable distribution:

> Assets acquired or accumulated during the course of marriage are subject to equitable division unless it can be shown by proof that such assets are attributable to one of the parties' separate estates prior to the marriage or outside the marriage.
>
> * * *
>
> We, today, recognize that marital partners can be equal contributors whether or not they both are at work in the marketplace.
>
> We define marital property for the purpose of divorce as being any and all property acquired or accumulated during the marriage. Assets so acquired or accumulated during the course of the marriage are marital assets and are subject to an equitable distribution by the chancellor. We assume for divorce purposes that the contributions and efforts of the marital partners, whether economic, domestic or otherwise are of equal value.

> In arriving at an equitable distribution the chancellor should follow those guidelines as set out in ***Ferguson v. Ferguson***, 639 So. 2d 921 (Miss. 1994).

Hemsley, 639 So. 2d at 915.

Therefore, a claim for division of property can only be viewed as separate and distinct from a claim for alimony. Shirley's waiver of the latter in no way compromised her claim for the division of the retirement fund. Accordingly, this assignment of error is without merit.

2. WHETHER THE AWARD OF ONE-HALF (50 PERCENT) OF CHARLES PIERCE'S MILITARY PENSION TO SHIRLEY PIERCE WAS ERROR.

Shirley's claim that she was "vested" with rights in Charles' military retirement pay ignores the limitations of our state laws and 10 U.S.C. § 1408, the Federal Uniformed Services Former Spouses' Protection Act (FUSFSPA). Unfortunately, as illustrated by the passage that follows, the lower court apparently made the same mistake:

> The Court is of the . . . opinion that Mrs. Pierce and Mr. Pierce were ***married to each other and living as husband and wife for in excess of 20 years while Mr. Pierce was on active duty as a member of the United States Navy.*** Over this 20 year period ***Mr. Pierce earned and became eligible for retirement from***

> ***the military service while Mrs. Pierce followed him faithfully*** throughout the years of their marriage up to the time of their last separation. ***The Court is of the opinion that Mrs. Pierce should be entitled to*** and the Court would grant Mrs. Pierce ***a 50 percent interest in Mr. Pierce's military retirement pay.***

(emphasis added).

The Federal Uniformed Services Former Spouses' Protection Act ***does not*** "vest" any rights in a spouse, nor does Mississippi law. We have previously commented on this issue, stating that:

> As we perceive FUSFSPA, it did not vest any rights in anyone. It merely removed a federal bar and allowed the states to treat the military retirement pensions of their domiciliaries as personal property subject to state property laws.

Brown v. Brown, 574 So.2d 688, 690-9 (Miss. 1990).

Mississippi law has "long recognized that, incident to a divorce, the Chancery Court has authority, where the equities so suggest, to order a fair division of property accumulated through the joint contributions and efforts of the parties." ***Brown v. Brown***, 574 So. 2d 688, 690 (Miss. 1990). See ***Brendel v. Brendel***, 566 So. 2d 1269, 1273 (Miss. 1990); ***Jones v. Jones***, 532 So. 2d 574, 580-81 (Miss. 1988); ***Regan v. Regan***, 507 So. 2d 54, 56 (Miss. 1987); ***Watts v. Watts***, 466 So. 2d 889, 891 (Miss. 1985); ***Clark v. Clark***, 293 So. 2d 447, 450 (Miss. 1974).

> There is a distinction between alimony and retirement benefits. In ***Brown v. Brown***, 574 So. 2d 688 (Miss. 1990), this Court noted that the Federal Uniformed Services Former Spouses Protection Act, 10 U.S.C. § 1408 (hereinafter FUSFSPA), "allowed the states to treat the military retirement pensions of their domiciliaries as personal property subject to state property laws." ***Brown***, 574 So. 2d at 690. In reference to a spouse's equitable right to a share of the other spouse's military retirement pay, this Court reiterated that a chancery court has authority, where equity so demands, to order a fair division of property accumulated through the joint contributions and efforts of the parties. ***Brown***, 574 So. 2d at 690. ***See also Brendel v. Brendel***, 566 So. 2d 1269, 1273 (Miss. 1990); ***Jones v. Jones***, 532 So. 2d 574, 580-81 (Miss. 1988); ***Regan v. Regan***, 507 So. 2d 54, 56 (Miss. 1987); ***Watts v. Watts***, 466 So. 2d 889, 891 (Miss. 1985); ***Clark v. Clark***, 293 So. 2d 447, 450 (Miss. 1974).

Hemsley v. Hemsley, 639 So. 2d at 914.

The lower court in this case made adequate findings, although additional information would have proved helpful in resolving this matter. Again, we would point to the factors set forth in ***Ferguson v. Ferguson***, as a guide for chancellors in effectuating an equitable distribution of marital property.

When property is found to be jointly accumulated, the chancellor should make specific findings in support of the proportionate share awarded to the parties because, "[o]ur cases hold that a spouse is <u>not automatically entitled</u> to an equal division of

jointly-accumulated properties." ***Brown v. Brown***, 574 So. 2d 688 (Miss. 1990); ***Dillon v. Dillon***, 498 So. 2d 328, 330 (Miss. 1986); ***Rives v. Rives***, 416 So. 2d 653, 657 (Miss. 1982).

Because the chancellor in the case ***sub judice*** has made adequate and specific findings with regard to the equitable distribution of the military retirement fund, we affirm.

JUDGMENT IS AFFIRMED.

PRATHER, P.J., SULLIVAN, ROBERTS AND SMITH, JJ., CONCUR. LEE, P.M., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY HAWKINS, C.J., BANKS AND McRAE, JJ. McRAE, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY LEE, P.J.

IN THE SUPREME COURT OF MISSISSIPPI

No. 91-CA-00809

CHARLES RICHARD PIERCE

v.

SHIRLEY JEANETTE PIERCE

LEE, PRESIDING JUSTICE, DISSENTING:

This appeal arises from the Harrison County Chancery Court's JUDGMENT dated June 5, 1991, awarding Charles Richard Pierce ("Charles") a divorce from his wife, Shirley Jeanette Pierce ("Shirley"), on the ground of adultery, as well as granting Shirley a fifty percent (50%) interest in and to Charles' military retirement pay of Charles. Because the chancellor's grant of the fifty percent (50%) interest in Charles' retirement pay is not supported by sufficient findings of fact, I would reverse and remand. Accordingly, I dissent.

I.

It is not necessary to review all the facts of the case. Only that aspect of the appeal ***sub judice*** concerning the grant to Shirley of a 50% interest in the military retirement pay of Charles has merit. Consequently, we need only address the law and those facts

which should have been considered by the chancellor in determining the proper division of Charles' military retirement pay.

Shirley and Charles were married by proxy on May 25, 1967, while Shirley was in Virginia and Charles, then serving with the United States Navy, was stationed in Scotland. During their marriage, Charles was stationed at several locations including Virginia, Scotland, Florida, Maryland, Louisiana, California, Okinawa, Gulfport, Mississippi, and Long Beach Mississippi. Shirley accompanied Charles on some but not all of his assignments. On child was born of the marriage, a daughter, who was over the age of twenty-one (21) and emancipated at the time of the divorce.

On December 15, 1987, Shirley filed a complaint for divorce in the First Judicial District of the Harrison County Chancery Court, seeking a divorce on the grounds of habitual cruel and inhuman treatment or, alternatively, irreconcilable differences. In her complaint, Shirley asked for monetary support in the form of periodic alimony and lump sum alimony. Additionally, she requested fifty percent (50%) of Charles' military retirement income, asserting that she had a "vested" interest in his retirement

pay of at least that amount pursuant to 10 U.S.C. § 1408, the Federal Uniformed Services Former Spouses' Protection Act (FUSFSPA). Charles filed a counter complaint, seeking a divorce on the grounds of cruel and inhuman treatment, adultery, desertion, or, in the alternative, irreconcilable differences.

At trial, Shirley amended her complaint to drop the request for periodic or lump sum alimony. However, she retained her right to seek an equitable portion of Charles' retirement pay. Charles' attorney made a motion for a Rule 41(b) M.R.C.P. dismissal of Shirley's complaint at the conclusion of her case-in-chief. The chancellor granted the motion and dismissed Shirley's cause of action, finding that she failed to prove her grounds for divorce. Charles then presented his evidence.

The evidence demonstrated that Charles and Shirley Pierce separated on January 1987, and that Shirley moved in with her male business partner and best friend. When Charles and Shirley sold a home in Long Beach, Shirley received $11,000 for her 1/2 interest. Shirley then used this $11,000 to buy a 1/2 interest in the house which she shared with her "male business partner and best friend." Later this house was sold and Shirley received approxi-

mately $50,000.00 for her 1/2 interest in that house. Shirley apparently owns the house she now shares with her "friend," who pays her $200 per month in rent.

After all the evidence has been presented, the chancellor granted Charles a divorce from Shirley on the ground of adultery, finding that she had engaged in an adulterous relationship with another man. The chancellor ruled that each party was entitled to the use and possession of the personalty (i.e., household furnishings, tangible goods, etc.) which they then had in their respective possession. Neither party was awarded attorney's fees. Shirley was not awarded periodic or lump sum alimony; however, she was granted a fifty percent (50%) interest in Charles' military retirement pay, based upon a limited finding (discussed below) concerning that fund.

Charles' filed a motion for a new trial, or, in the alternative, a judgment notwithstanding the verdict. The motion was denied by the chancellor.

Aggrieved by the chancellor's division of his retirement pay, Charles appealed to this Court, assigning the following as error:

1. **WHETHER SHIRLEY PIERCE VOLUNTARILY AND SPECIFICALLY RELEASED CHARLES**

PIERCE FROM ANY CLAIM OF ALIMONY AND FROM HER CLAIM TO 50 PERCENT OF HIS MILITARY RETIREMENT UNDER 10 U.S.C. § 1408.

2. **WHETHER THE AWARD OF ONE-HALF (50 PERCENT) OF CHARLES PIERCE'S MILITARY PENSION TO SHIRLEY PIERCE WAS ERROR.**

3. **WHETHER THERE WAS PROOF OF DOMICILE SUFFICIENT FOR AN AWARD OF ONE-HALF (50 PERCENT) OF THE MILITARY PENSION TO SHIRLEY PIERCE.**

II.

WHETHER SHIRLEY PIERCE VOLUNTARILY AND SPECIFICALLY RELEASED CHARLES PIERCE FROM ANY CLAIM OF ALIMONY AND FROM HER CLAIM TO 50 PERCENT OF HIS MILITARY RETIREMENT UNDER 10 U.S.C. § 1408.

Charles contends that Shirley voluntarily and specifically released him from any claim of alimony and that the grant of an interest in his military retirement pay to Shirley is an award of alimony. It is without doubt that Shirley waived her right to alimony. But, it is equally apparent that she retained her right to seek an equitable division of property, including Charles' military retirement pay. The trial transcript reflects the following colloquy between Shirley's attorney and the chancellor:

> ***We are requesting the Court to grant Mrs. Pierce 50 percent of Mr. Pierce's retirement.*** We are asking

> the Court to grant Mrs. Pierce the use and possession of all household goods furnishings, utensils and appliances that she had at the time of the separation and grant unto Mr. Pierce the exclusive use, possession and title to all household goods, furnishings, utensils that he had at the date of separation.
>
> We are asking the Court to grant Mrs. Pierce the use and possession of her automobile. We are asking Mr. Pierce to be required to contribute a reasonable sum to Mrs. Pierce for attorney's fees. ***We are not and we waive our right, even if we have any--we're not asking for alimony, either lump sum or periodic anymore. The only thing we think that this Court should do in this particular case is grant Mrs. Pierce, other than what I just asked for, is half of Mr. Pierce's retirement.***

(emphasis added).

As to Charles' assertion that granting Shirley an interest in his pension was an award of alimony, Charles fails to recognize the distinction between a division of property and an award of alimony. A military pension is considered personal property subject to the personal property laws of the forum state, and, in Mississippi, our laws grant chancellors the authority to effect a division of property between spouses after making certain requisite factual findings. This Court has stated that, "[a] spouse's military retirement pension is an asset . . .." ***Southern v. Glenn***, 568 So.2d 281, 283, n.l. (Miss. 1990). We have also said that, "a former spouse's rights *vel*

non in his or her former mate's military retirement pension . . . is *subject to the personal property laws* of the states . . ." ***Newman v. Newman***, 558 So.2d 821, 823 (Miss. 1990) (emphasis added).

In further contradiction to Charles' position, we have traditionally recognized four methods of providing support for spouses incident to a divorce, including a division of jointly accumulated property, stating that:

> Our law vests in the chancery courts of this state broad authority to provide for the material needs of spouses incident to a divorce. Over the years our cases have recognized several general forms of aid including, but not limited to: (1) periodic alimony, sometimes called permanent or continuing alimony; (b) lump sum alimony or alimony in gross; (c) ***division of jointly accumulated property***; and (d) award of equitable interest in property. There are no clear lines of demarcation between these, nor should there be, and our courts have long been authorized in their sound discretion to use one or several or all in combination.

Bowe v. Bowe, 557 So. 2d 793, 794 (Miss. 1990) (emphasis added).

Therefore, a claim for division of property can only be viewed as separate and distinct from a claim for alimony. Shirley's waiver of the latter in no way compromised her claim for the division of the retirement fund. Accordingly, this assignment of error is without merit.

III.

WHETHER THE AWARD OF ONE-HALF (50 PERCENT) OF CHARLES PIERCE'S MILITARY PENSION TO SHIRLEY PIERCE WAS ERROR.

Shirley's claim that she was "vested" with rights in Charles' military retirement pay ignores the limitations of our state laws and 10 U.S.C. § 1408, the Federal Uniformed Services Former Spouses' Protection Act (FUSFSPA). Unfortunately, as illustrated by the passage that follows, the lower court apparently made the same mistake:

> The Court is of the . . . opinion that Mrs. Pierce and Mr. Pierce were ***married to each other and living as husband and wife for in excess of 20 years while Mr. Pierce was on active duty as a member of the United States Navy.*** Over this 20 year period ***Mr. Pierce earned and became eligible for retirement from the military service while Mrs. Pierce followed him faithfully*** throughout the years of their marriage up to the time of their last separation. ***The Court is of the opinion that Mrs. Pierce should be entitled to*** and the Court would grant Mrs. Pierce ***a 50 percent interest in Mr. Pierce's military retirement pay.***

(emphasis added).

The Federal Uniformed Services Former Spouses' Protection Act ***does not*** "vest" any rights in a spouse, nor does Mississippi law. We have previously commented on this issue, stating that:

> As we perceive FUSFSPA, it did not vest any rights in anyone. It merely removed a federal bar and allowed the states to treat the military retirement pensions of their domiciliaries as personal property subject to state property laws.

Brown v. Brown, 574 So.2d 688, 690-91 (Miss. 1990).

Mississippi law has "long recognized that, incident to a divorce, the Chancery Court has authority, where the equities so suggest, to order a fair division of property accumulated through the joint contributions and efforts of the parties." ***Brown v. Brown***, 574 So. 2d 688, 690 (Miss. 1990). See ***Brendel v. Brendel***, 566 So. 2d 1269, 1273 (Miss. 1990); ***Jones v. Jones***, 532 So. 2d 574, 580-81 (Miss. 1988); ***Regan v. Regan***, 507 So. 2d 54, 56 (Miss. 1987); ***Watts v. Watts***, 466 So. 2d 889, 891 (Miss. 1985); ***Clark v. Clark***, 293 So. 2d 447, 450 (Miss. 1974).

This court recently announced that a chancery court can treat the retirement fund as marital property and that we "recognize that marital partners can be equal contributors whether or not they both are at work in the marketplace." ***Hemsley v. Hemsley***, 639 So. 2d 909 (Miss. 1994). Furthermore, in that same case, this Court held that, "[i]n arriving at an equitable distribution the chancellor should follow those guidelines as set out in ***Ferguson v. Ferguson***, 639

So. 2d 921, decided July 7, 1994." ***Hemsley***, 639 So. 2d at 915.

Those guidelines are as follows:

1. Substantial contribution to the accumulation of the property. Factors to be considered in determining contribution are as follows:

    a. Direct or indirect economic contribution to the acquisition of the property;

    b. Contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage; and

    c. Contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets.

2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree or otherwise.

3. The market value and the emotional value of the assets subject to distribution.

4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;

5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;

6. The extent to which property division may, with the equity to both parties, be utilized to eliminate periodic

payments and other potential sources of future friction between the parties;

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and,

8. Any other factor which in equity should be considered.

Ferguson, 639 So. 2d at 928.

In this case, the lower court, however, made absolutely no findings of fact as to Shirley's contributions to the accumulation of the retirement fund, other than that ***"[Mrs. Pierce] followed him faithfully"*** and ***"that Mrs. Pierce should be entitled . . ."***

Furthermore, even when property is found to be jointly accumulated, the chancellor must make specific findings in support of the share to be awarded to each of the parties because our cases hold that a spouse is not automatically entitled to an equal division of jointly-accumulated properties. ***Brown v. Brown***, 574 So. 2d 688 (Miss. 1990); ***Dillon v. Dillon***, 498 So. 2d 328, 330 (Miss. 1986); ***Rives v. Rives***, 416 So. 2d 653, 657 (Miss. 1982).

The lower court made absolutely no finding in support of its division of the retirement fund. Apparently, the chancellor accepted Shirley's flawed "vested" rights argument. Clearly, a

finding of more than the mere ***status*** of husband or wife is necessary to support the fifty-fifty division of a retirement fund, as required by ***Ferguson, supra***. There, the majority of this Court announced the proper procedure that a chancellor should follow when equitably dividing marital assets, holding that:

> In light of the pronouncement of these guidelines for the equitable distribution method of division of marital assets, this Court reverses the issues relating to marital property division and remands for determination of value of all assets and further consideration of division in light of the principles established herein.

Ferguson, 639 So. 2d at 937.

Accordingly, this case should be reversed and remanded for a proper determination of the parties' rights with respect to the retirement fund under the aforementioned factors.

HAWKINS, C.J., BANKS AND McRAE, JJ., JOIN THIS OPINION.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 91-CA-00809

CHARLES RICHARD PIERCE

v.

SHIRLEY JEANETTE PIERCE

McRAE, JUSTICE, DISSENTING:

The issue in the Pierce's divorce is what remedy remains once a cause of action is dismissed. When the chancellor dismissed Shirley Pierce's complaint and granted Richard Pierce a divorce on his counterclaim, he, in effect, removed any basis for Shirely's claim to his retirement benefits. The record reveals the chancellor said:

> **I'm of the opinion that Mrs. Pierce has failed to prove her case to the necessary degree to make a prima facie case for divorce on the grounds of habitual, cruel and inhuman treatment. I will dismiss this cause of action** (emphasis added).

No other basis exist because she did not make a prayer for relief in her answer to his counterclaim.

This Court has addressed the issue where a defendant fails to answer in a divorce case:

> Due to the special nature of a divorce proceeding, in which the court may not enter a true default judgment, a defendant's failure to answer doe snot deprive the defendant of the right to put on evidence to rebut the aliegations of the complaint. The defendant cannot offer evidence outside hte scope of the complaint and cannot offer any evidence supporting any affirmative issue.

Rawson v. Buta, 609 So. 2d 426, 431 (Miss. 1992).

In essence, Shirely failed to adequately answer Charles' counterclaim. Had Shirely in her answer to the counterclaim adopted her complaint as an affirmative matter, then perhaps she could have a basis for a claim. Since the chancellor dismissed her cause of action, Shirley was left with no avenue upon which to base her claim.

The reason behind requiring a complainant to plead her relief is to avoid a denial of due process. **Miller v. Miller**, 512 So. 2d 1288 (Miss. 1989). In **Miller**, this Court stated:

> The original complaint sought no alimony or child support, yet both were incorporated into the final decree. This court has held that an award to the wife of alimony and child support where such is not sought in the pleadings is error, in that it deprives the husband of due process. **Diamond v. Diamond**, 403 So. 2d 129 (Miss. 1981); **Fortenberry v. Fortenberry**, 338 So. 2d 806 (Miss. 1976). These cases, however, do not characterize the judgment as void. Had Mr. Miller filed a 60(b) motion or appealed the final decree

> on this ground, no doubt that portion of the decree would have been stricken.

Miller, 512 So. 2d at 1288.

This view is in accord with a recent opinion which said where the issue is sufficiency of the pleadings to support a specific award, the general rules of pleading govern since there is no inconsistent statutory provision. **Crowe v. Crowe**, 1994 WL 401471, July 7, 1994; **See also Smith v. Smith**, 607 So. 2d 122, 127 (Miss. 1992). "The purpose of Rule 8 is to give notice, not to state facts and narrow the issues as was the purpose of pleadings in prior Mississippi practice." **Crowe**, 1994 WL 401471 at *4. **Crowe** also states that under the general prayer, any relief will be granted which the original bill justifies and which is established by the main facts of the case, so long as the relief granted will not cause surprise or prejudice to the defendant. **Id.**

Applying **Crowe**, Shirley's original prayer for relief was completely dismissed, and therefore, any relief being granted from the complaint cannot be justified. At the moment the chancellor dismissed Shirley's entire complaint, Charles proceeded on the assumption that the only issues left were those presented by his

counterclaim which did not include a division of retirement benefits.

Additional statements by this Court support a reversal of the chancellor's decision:

> Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled by the proof and which is within the jurisdiction of the court to grant, even if the party has not demanded such relief in his pleading . . .

Smith v. Smith, 607 So. 2d at 281.

The final judgment in the Pierce case was granted in favor of Charles. It is his proof by which the relief should be granted since the chancellor may not make such an award without proper pleadings. **Diamond v. Diamond**, 403 So. 2d 129, 130-31 (Miss. 1981). It is for these foregoing reasons that I respectfully dissent.

LEE, P. J., JOINS THIS OPINION.

SUPREME COURT OF MISSISSIPPI
Linda Stone, Clerk
Third Floor Gartin Building
450 High Street
P.O. Box 249
Jackson, Mississippi 39205-0249

February 2, 1995

Dale Robinson
Attorney at Law
1901 24th Ave.
Gulfport MS 39501

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 2nd Day of February, 1995.

Supreme Court Case #91-CA-00809-
Trial Court Case #91512

Charles Richard Pierce

vs.

Shirley Jeannette Pierce

Petition for Rehearing denied. Hawkins, C.J., Lee, P.J., Banks and McRae, JJ., would grant.

Supreme Court Clerk

lwp

ccs: G. Eric Geiss

Harrison County Chancery Clerk

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *

If any original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

DOCUMENT 2

Judgment of the Chancery Court of Harrison County, Mississippi

Charles Richard Pierce
vs.
Shirley Jeanette Pierce

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

SHIRLEY JEANETTE PIERCE **PLAINTIFF**

VERSUS **CIVIL ACTION NO. 91,512**

CHARLES RICHARD PIERCE **DEFENDANT**

JUDGMENT

THIS CAUSE CAME TO BE HEARD upon an Amended Complaint for divorce filed by the Plaintiff, SHIRLEY JEANETTE PIERCE, Answer and Counterclaim by the Defendant, CHARLES RICHARD PIERCE, upon both oral and documentary evidence being duly heard in open court, and the Court having heard and considered same, and being fully advised in the premises, does find and order as follows, to wit:

I.

That the Plaintiff is an actual, adult resident citizen of the First Judicial District of Harrison County, Mississippi, and has been such a resident citizen for a period longer than six months next preceding the filing of the original Complain and Counterclaim in

this cause. That the Defendant is an actual, adult resident citizen of the State of Florida. That the residency of the parties was not established for the purpose of obtaining a divorce , that this court has jurisdiction of the parties and of the subject matter herein, and that proscriptions of 50 U.S.C. App. 501 et. seq. have been observed as pertains to the Defendant .

II.

That both the Plaintiff and Defendant are members of the White or Caucasian Race and over the age of 21 years.

III.

That the Plaintiff and Defendant were lawfully married, each to the other on May 25, 1967, in Chesapeake, Virginia, and lived together as husband and wife until their final separation on or about the month of July, 1987, in Long Beach, Mississippi.

IV.

That one child was born of the union of Plaintiff and Defendant, said child now being an emancipated adult over the age of twenty-one years and not dependent upon either Plaintiff or Defendant for support and maintenance. The court further finds that no other children are expected to be born.

V.

The court finds that Plaintiff's complaint for a divorce on the ground of Habitual Cruel and Inhuman Treatment should be denied, and that the Plaintiff did, subsequent to the separation of the parties, engage in adulterous conduct which did not cause the final separation but which the Court cannot excuse.

VI.

That the Defendant, CHARLES RICHARD PIERCE, is entitled to a full, complete, final and absolute divorce, of and from the Plaintiff, upon the statutory ground of uncondoned ADULTERY as set forth in Section 93-5-1, et. seq., of the Mississippi Code of 1972, Annotated (Suppl. 1989).

VII.

That the Plaintiff and Defendant were married to one another and living as husband and wife for a period of time in excess of twenty years, during which time the defendant was on active duty as a member of the United States Navy, and that the Plaintiff is, therefore, entitled to receive fifty percent (50%) of the Defendant's military retirement income in accordance with the applicable

provisions of 10 U.S.C. 1408, commonly referred to as the Uniformed Services Former Spouses Protection Act, and further, that pursuant to said Act the Chancery Court Clerk should be directed to provide a copy of this Judgment to the appropriate authority for implementation of such payments.

VIII.

That there are presently on deposit with the Chancery Court Clerk certain funds paid by the Defendant in to the registry of the court, which funds should be delivered to the Plaintiff.

IX.

That there exists no other issues or interests by and between the parties which require any ruling or disposition by this Court. It is, therefore,

ORDERED AND ADJUDGED that the Defendant be, and he is hereby granted a full, complete, final and absolute divorce, of and from the Plaintiff, upon the statutory ground of uncondoned ADULTERY, as set forth in Section 93-5-1, et. seq. of the Mississippi Code of 1972, Annotated (Supp. 1989), and the bonds of matrimony now and heretofore existing by and between Plaintiff and Defendant be, and the same are hereby canceled, annulled and

forever held for naught and the parties hereto are now fully, finally and completely divorced, of and from each other. It is further,

ORDERED AND ADJUDGED that the Plaintiff be, and she is hereby granted a fifty percent (50%) interest in and to the military retirement income of the Defendant, pursuant to and in accordance with applicable provisions of 10 U.S.C. 1408, et. seq., and that the Chancery Coutr [sic] Clerk be directed to provide a certified copy of this Judgment to the appropriate official for implementation of this order. It is further,

ORDERED AND ADJUDGED that the Chancery Court Clerk be, and he is hereby directed to deliver to the Plaintiff such sums as have been paid into the registry of the court by the Defendant. It is further,

ORDERED AND ADJUDGED that the costs of these proceedings be, and the same are hereby assessed against the Plaintiff.

SO ORDERED this the 5th day of June, 1991.

/s/ Jason H. Floyd, Jr.
CHANCELLOR

DOCUMENT 3

Order on Motion for New Trial
Chancery Court, Harrison County, Mississippi

Charles Richard Pierce
vs.
Shirley Jeanette Pierce

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

SHIRLEY JEANETTE PIERCE **PLAINTIFF**

VERSUS **CIVIL ACTION NO. 91,512**

CHARLES RICHARD PIERCE **DEFENDANT**

ORDER

THIS CAUSE CAME TO BE HEARD upon a Motion For New Trial Or In The Alternative Judgment Not Withstanding the Judgment, To Reconsider And Other Relief filed by the Defendant, CHARLES RICHARD PIERCE, Response to said Motion by the Plaintiff, SHIRLEY JEANETTE PIERCE, and the Court having heard and considered same, and being fully advised in the premises, does find and order as follows, to wit:

I.

That the requests of the Defendant for new trial, for a judgment notwithstanding the verdict, and for reconsideration of the prior judgment of this Court are not well taken and should be denied.

II.

That funds heretofore deposited by the Defendant into the registry of the Court have been delivered to the Plaintiff, and that Defendant's request pertaining to said funds are now moot.

III.

That the Defendant should be granted supersedeas with regard to operation of that portion of the Judgment of June 5, 1991, requiring that he pay unto the Plaintiff a sum equivalent to one-half or fifty percent of his net military retirement income, provided that the Defendant post an appeal bond with the Clerk of this Court, in accordance with Rule 8(a) of the Mississippi Supreme Court Rules, in the sum and amount of $15,000.00, said

sum being deemed equivalent to 125% of the amount which would ordinarily accrue to the Plaintiff in a period of twenty-four months, pending disposition of an appeal.

It is, therefore,

ORDERED AND ADJUDGED that the requests of the Defendant for a new trial, for a judgment notwithstanding the verdict, and for reconsideration of the prior judgment of this Court

are not well taken and should be and the same are hereby denied. It is further,

ORDERED AND ADJUDGED that funds heretofore deposited by the Defendant into the registry of the Court have been delivered to the Plaintiff, that Defendant's requests pertaining to said funds are now moot, and such should be and the same are hereby denied. It is further,

ORDERED AND ADJUDGED that the Defendant should be and he is hereby granted supersedeas with regard to operation of that portion of the Judgment of Jun 5, 1991, requiring that he pay unto the Plaintiff a sum equivalent to one-half or fifty percent of his net military retirement income, provided that the Defendant post an appeal bond with the Clerk of this Court, in accordance with Rule 8(a) of the Mississippi Supreme Court Rules, in the sum and amount of **$15,000.00, said sum being deemed equivalent to 125% of the amount which would ordinarily accrue to the Plaintiff in a period of twenty-four months**, pending disposition of an appeal.

SO ORDERED this the 2nd day of August, 1991.

_____

CHANCELLOR

CERTIFICATE OF SERVICE

I Dale Robinson, Attorney at Law, do certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing to the Honorable J.N. Randall at his usual mailing address of P.O. Box 749, Gulfport, Mississippi, 39501, and the Honorable Jason H. Floyd Jr. P.O. Box 986, Gulfport, Mississippi, 39502.

Certified this the 3 day of Feb 1992.

/s/ Dale Robinson
DALE ROBINSON

Dale Robinson
Attorney at Law
1901 24th Av.
Gulfport, Ms., 39501
601-864-9941

DOCUMENT 4

10 USC §1408

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) Definitions.--In this section

(1) The term "Court" means--

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction; and

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

(2) The term "court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal

separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), which--

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for--

(i) payment of child support (as defined in section 462(b) of the Social Security Act (42 U.S.C. 662(b));

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term "final decree" means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which--

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's

retired pay is being made pursuant to a court order under this section.

[(E) and (F) redesignated (C) and (D)]

(5) The term "member" includes a former member entitled to retired pay under section 1331 of this title.

(6) The term "spouse or former spouse" means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term "retired pay" includes retainer pay.

(b) **Effective service of process.**--For the purposes of this section--

(1) service of a court order is effective if--

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by certified or registered mail, return receipt requested;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order--

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) **Authority for court to treat retired pay as property of the member and spouse**.--(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a

member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) Payments by secretary concerned to spouse or former spouse.--(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall

begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired or retainer pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms

of the applicable court order, but not later than the date of the death of the member of the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as a result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(c) **Limitations**.--(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more

former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3) (A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall:

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired, pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of--

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus--

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (a) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4) (A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-serve basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (i) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the

spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) Immunity of officers and employees of the United States.--(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant

to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying on any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) Notice to member of service of court order on secretary concerned.--A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) Benefits for dependents who are victims of abuse by members losing right to retired pay.--(1) If, in the case of a member or former member of the armed forces referred to in

paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if--

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation); and

(B) the spouse or former spouse--

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification--

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law, the amount payable under the court order to the spouse or former spouse of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any

amount payable under this section to a spouse or former spouse of the member or former member.

(7) (A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case

of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard.

(9) (A) A spouse or former spouse of a member or former member of the armed forces referred to paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member

or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provisions of law instead of this paragraph.

(10) (A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the

termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term "dependent child," with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who--

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) **Regulations**.--The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

DOCUMENT 5

**In the Chancery Court of the First Judicial District,
Harrison County, Mississippi**

Shirley Pierce
v.
Charles Pierce

Case No. 91-512

Amended Complaint

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT HARRISON COUNTY, MISSISSIPPI

SHIRLEY PIERCE	PLAINTIFF
VS	NO. 91,512
CHARLES PIERCE	DEFENDANT

AMENDED COMPLAINT

COMES NOW, the Plaintiff in the above styled and numbered cause, SHIRLEY JEANETTE PIERCE, and files this her Amended Complaint for Divorce and for other relief, and in support thereof would show the following, to-wit:

I.

That the Plaintiff, SHIRLEY JEANETTE PIERCE, is an actual, adult resident citizen of the First Judicial District of Harrison County, Mississippi, and has been such resident citizen for more than six months next preceding the filing of this Amended Complaint.

II.

That the Defendant, CHARLES RICHARD PIERCE, who is believed to be a resident citizen of the State of Florida but whose post office and street address are unknown, has heretofore submitted to the jurisdiction of this Court and may be served with this

Amended Complaint, in accordance with applicable provisions of Rule Four of the Mississippi Rules of Civil Procedure, by delivery of a true copy of same to his attorney or [sic] record, Dale Robinson, Esq., at said attorney's usual business mailing address of 1914 24th Avenue, Gulfport, Mississippi, 39501.

III.

That this Court has jurisdiction of the parties, of the child born of the parties, and of the subject matter herein.

IV.

That the Plaintiff and Defendant are presently husband and wife, having been lawfully married, each to the other, on May 25, 1967, in Chesapeake, Virginia; and further, that Plaintiff and Defendant lived together as husband and wife until their final separation on or about July, 1987, in Long Beach, Mississippi.

V.

That both Plaintiff and Defendant are over the age of twenty-one years and members of the White or Caucasian race.

VI.

That to the union of Plaintiff and Defendant one child was born, namely: **Nikkie Amanda Pierce**, a female born December

28, 1968, and that said child is now over the age of twenty-one. Plaintiff would further show that no other children are expected to be born.

VII.

Plaintiff would show that the Defendant is guilty of HABITUAL CRUEL AND INHUMAN TREATMENT of her, as set forth in Section 93-5-1 of the Mississippi Code of 1972, Annotated, and that she is entitled to a full, complete, final and absolute divorce, of and from Defendant, upon said statutory ground.

VIII.

In the alternative, Plaintiff would show that there exist IRRECONCILABLE DIFFERENCES between the parties, as set forth in Section 93-5-2 of the Mississippi Code of 1972, Annotated (Supp. 1989), and that the parties herein are entitled to a divorce, of and from each other, upon said statutory ground.

IX.

Plaintiff would show that the Defendant is no longer required to contribute toward the support and maintenance of the parties' child, but that the Defendant provided no support from and after the time of the parties' separation and that the Plaintiff is, there-

fore, entitled to a judgment of and from Defendant in an amount commensurate with that which would have been his legal obligation to pay child support from June, 1987 until December 28, 1989, the date of the child's twenty-first birthday. Plaintiff would show that she is also entitled to a judgment of and from Defendant in an amount equal to no less than one-half of all health care related expenses, including that attendant the maintenance of any health care insurance, incurred by or on behalf of said child during said period, and further, that the Plaintiff is entitled to a judgment of and from Defendant for all costs incurred attendant the child's obtaining a college education.

X.

Plaintiff would show that she is entitled to receive and that the Defendant should be required to pay unto Plaintiff a reasonable sum each month as periodic alimony. Plaintiff would further show that she has, pursuant to the Uniformed Services Former Spouses Protection Act, 10 U.S.C. 1401, et. seq., a vested interest in and to no less than one-half of the Defendant's military retirement income, and that the Defendant should, therefore, be ordered to pay unto Plaintiff said interest in and to his military retirement income as

either lump sum and/or such other form of alimony or property settlement as is by the Court deemed appropriate.

XI.

Plaintiff would show that she is entitled to the exclusive ownership, use and possession of all household goods and personal property and effects in her possession, and further, that she is entitled to the exclusive ownership, use and possession of the 1986 Buick Skylark titled in her name and which she presently operates.

XII.

Plaintiff would show that the Defendant should be required to assume responsibility for the payment of any and all joint marital debts existing on the date of the parties' separation and any and all debts and financial obligations incurred in his own name from and after said date, holding Plaintiff harmless thereon.

XIII.

Plaintiff would show that she and the Defendant are joint holders of title in and to certain real property located in the State of Florida, that the Plaintiff is the holder of a 49% interest in and to Pierce Investment Company, Inc., through which such title is believed to be held, and that she is, therefore, entitled to a 49%

interest in and to any income derived therefrom since the date of the parties' separation and/or in the future, or in the alternative, that she is entitled to a judgment of and from Defendant in the sum and amount of 49% of the current value of said property and corporation, for which Plaintiff shall execute such deed or other instrument or instruments necessary and proper to convey her interest in and to said real property and corporation to the Defendant.

XIV.

Plaintiff would show that she is without sufficient funds with which to compensate her legal counsel in this cause and that the Defendant should, therefore, be required to contribute a reasonable sum to Plaintiff for attorney's fees, and further, that Defendant should be required to pay all costs of Court, costs of discovery, and any and all other costs incurred in the presentation of this cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks that this Court receive and file this, her Amended Complaint for Divorce and for other relief, that process issue to the Defendant in the time and manner prescribed by law, and that after due consideration and hearing hereon this Court will grant the following relief:

1. Grant unto Plaintiff a full, complete, final and absolute divorce, of and from Defendant, upon the statutory ground of HABITUAL CRUEL AND INHUMAN TREATMENT;

2. In the alternative, grant unto the parties a divorce, of and from each other, upon the statutory ground of IRRECONCILABLE DIFFERENCES;

3. Grant unto Plaintiff a judgment of and from Defendant in an amount commensurate with that which would have been his legal obligation to pay child support from June, 1987 until December 28, 1989, the date of the parties' child's twenty-first birthday;

4. Grant unto Plaintiff a judgment of and from Defendant in an amount no less than one-half of all health care related expenses, including that attendant the maintenance of any health care insurance, incurred by or on behalf of said child during the aforesaid period;

5. Grant unto the Plaintiff a judgment of and from Defendant for all costs incurred pursuant to the child's obtaining a college education.

6. Order that the Defendant pay unto Plaintiff a reasonable sum each month as periodic alimony;

7. Order that the Defendant pay unto the Plaintiff, as lump sum and/or such other form of alimony or property settlement as is deemed appropriate, no less than one-half of his military retirement income, pursuant to applicable provisions of the Uniformed Services Former Spouses Protection Act, 10 U.S.C. 1401, et. seq.;

8. Grant unto Plaintiff the exclusive ownership, use and possession of all household goods and personal property and effects in her possession, and further, the exclusive ownership, use and possession of the 1986 Buick Skylark titled in her name and which she presently operates;

9. Order that the Defendant assume responsibility for the payment of any and all joint marital debts existing on the date of the parties' separation and any and all debts and financial obligations incurred in his own name from and after said date, holding Plaintiff harmless thereon;

10. Order that the Defendant pay unto the Plaintiff 49% of any and all income derived from the real property and/or corporation of which the parties' are joint holders of title from and after

the date of their separation and 49% of all income hereinafter derived from said property and/or corporation, or in the alternative, grant unto the Plaintiff a judgment of and from Defendant in the sum and amount of 49% of the current value of said property and corporation, for which Plaintiff shall and should be required to execute such deed or other instrument or instruments necessary and proper to convey her interest in and to said real property and corporation to the Defendant; and,

11. Grant unto Plaintiff a judgment of and from Defendant in a reasonable sum as Plaintiff for attorney's fees incurred herein, and further, order that the Defendant pay all costs of Court, costs of discovery, and any and all other costs incurred in the presentation of this cause.

If mistaken in the relief prayed for, Plaintiff asks that she be granted such other, further and general relief as the Court deems she is, in equity, entitled to receive.

Respectfully submitted,

/s/ Shirley Jeanette Pierce
SHIRLEY JEANETTE PIERCE

STATE OF MISSISSIPPI

COUNTY OF HARRISON

PERSONALLY CAME AND APPEARED before me, the undersigned authority in and for the jurisdiction aforesaid, the within named SHIRLEY JEANETTE PIERCE, who having been first by me duly sworn states on oath that this Amended Complaint is not filed by or through collusion with the Defendant for the purpose of obtaining a divorce, and that all of the facts and matters and things set forth in the above and foregoing Amended Complaint are true and correct as therein stated, and where stated on information and belief, she verily believes same to be true.

/s/ Shirley Jeanette Pierce
SHIRLEY JEANETTE PIERCE

SWORN TO AND SUBSCRIBED before me, Notary Public, on this the 9th day of August, A.D., 1990.

/s/
NOTARY PUBLIC

MY COMMISSION EXPIRES:
My Commission Expires May 20, 1991

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CERTIFICATE OF SERVICE

I, James N. Randall, Jr., of the law firm of Randall & Geiss, do hereby certify that I have this date mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Amended Complaint to the Hon. Dale Robinson, at his usual business mailing address of 1914 24th Avenue, Gulfport, Mississippi, 39501.

SO CERTIFIED this the 10th day of August, 1990.

/s/ James N. Randall, Jr.
JAMES N. RANDALL, JR.

JAMES N. RANDALL, JR.
RANDALL & GEISS
ATTORNEYS AT LAW
P.O. BOX 749
GULFPORT, MS 39502
(601) 868-1013

DOCUMENT 6

**In the Chancery Court of the First Judicial District,
Harrison County, Mississippi**

Shirley Pierce
v.
Charles Pierce

Case No. 91-512

Answer to Amended Complaint

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT HARRISON COUNTY, MISSISSIPPI

SHIRLEY PIERCE	PLAINTIFF
VS	NO. 91,512
CHARLES PIERCE	DEFENDANT

ANSWER TO AMENDED COMPLAINT

COMES NOW, the Defendant, CHARLES PIERCE, and files this Answer to the Amended Complaint for Divorce exhibited against him and would show unto the Court the following, to-wit:

1. The Defendant is without sufficient knowledge to admit or deny paragraph I and out of an abundance of caution would deny the allegations in paragraph (1).

2. The Plaintiff would admit the allegations in paragraph (2).

3. The Plaintiff would admit the allegations in paragraph (3).

4. The Plaintiff would admit the first marriage occurred on or about May 25, 1967. The Defendant alleges the parties were divorced in the State of Louisiana on or about October 20, 1977. Defendant alleges the parties remarried in Louisiana or [sic] about February 4, 1978. Defendant alleges the separation of the parties occurred August 1985, except for attempted reconciliation in

August 1986. Defendant denies all other allegations of paragraph IV. not previously admitted.

5. The Defendant would admit the race of the Plaintiff and the parties are above the age of 21 yrs. Defendant is a native American.

6. The Defendant would admit the allegations in the paragraph (6).

7. The Defendant would deny the allegations in paragraph (7).

8. The Defendant would admit the allegations in paragraph (8).

9. The Defendant would deny the allegations in paragraph (9).

10. The Defendant would deny the allegations in paragraph (10).

11. The Defendant would admit the allegations in paragraph (11).

12. The Defendant would deny the allegations in paragraph (12).

13. The Defendant would deny the allegations in paragraph (13).

14. The Defendant would deny the allegations in paragraph (14).

15. The Defendant would deny the unnumbered paragraph that begins with WHEREFORE PREMISE CONSIDERED and that the Plaintiff is not entitled to any relief whatsoever not previously admitted.

WHEREFORE PREMISE CONSIDERED, the Defendant prays this Answer to the Complaint for Divorce exhibited against him be received and filed and that upon a hearing hereon this Court will deny the Plaintiff any relief whatsoever.

If mistaken in relief prayed for, Defendant would pray for such other and general relief as in equity he may be entitled to receive as in duty bound, he will forever pray.

Now having answered the Amended Complaint exhibited against him the Defendant files his Affirmative Defense and would show unto the court the following to-wit:

1. That the Plaintiff fails to state a claim upon which relief can be granted.

Now having answered the Complaint exhibited against him and filed his Affirmative Defense, Defendant files this his Amended Counter Claim and would show unto the Court the following to-wit:

1. That the Court has jurisdiction of the parties and the subject matter herein.

2. That on or about January 19, 1988 Defendant filed his Answer and Counter Claim for Divorce on or about November 7, 1988 Defendant filed his Amended Answer to Divorce in the above styled and numbered cause. Plaintiff filed her answer to the Defendants Counter Claim and Amended Claim for Divorce. Defendant's answer to counter claim and amended answer to counter claim is made a part of and merged herein by reference as if copied fully herein.

3. Counter-Plaintiff would show that he is entitled to receive and that the Counter-Defendant should be required to pay unto Counter-Plaintiff a reasonable sum each month as periodic alimony.

4. Counter-Plaintiff would show that he is entitled to receive and the Counter-Defendant should be required to pay unto

the Counter-Plaintiff $1,500.00 for the value of property of the Counter-Plaintiff disposed of by Counter-Defendant since the separation of the parties without the permission of the Counter-Plaintiff.

[Note, paragraphs misnumbered, #5 skipped]

6. Counter-Plaintiff would show that he is entitled to receive and the Counter-Defendant should be required to pay unto the Counter-Plaintiff $418.63 the value of money removed without authority from Pierce Investment Company since the separation without consent of Counter-Plaintiff.

7. Counter-Plaintiff would show that he is entitled to receive and the Counter-Defendant should be required to pay unto the Counter-Plaintiff $4,850.00 for personal property casualty loss on insurance claim of personal property of Counter-Plaintiff.

8. Counter-Plaintiff would show the Counter-Defendant should be required to pay all cost of court and all other cost incurred in the presentation of this cause.

WHEREFORE, PREMISE CONSIDERED, Counter-Plaintiff files this her Answer to Amended Complaint for Divorce his Affirmative Defense and his Amended Counter Complaint for

Divorce and prays the Court will receive and file same and that after a hearing hereon this Honorable Court will deny the Plaintiff any relief what so ever and access all cost to the Plaintiff and award reasonable attorney fee for defense herein.

Defendant further prays that his Counter-Claim be received and filed and that after a hearing hereon his request for relief be granted and all cost and attorney fees be accessed against Plaintiff.

If mistaken in relief prayed for, Plaintiff would pray for such other and general relief as in equity he may be entitled to receive as in duty bound, he will forever pray.

Respectfully submitted,

/s/ Charles R. Pierce
CHARLES PIERCE

STATE OF FLORIDA

COUNTY OF LEON

Personally appeared before me the undersigned authority in and for the State and County aforesaid, the within named, CHARLES PIERCE, who having been by me first duly sworn, stated on oath that the above cause or causes, facts matters and things stated in the Answer herein are true and correct as therein

stated to the best of her [sic] knowledge and belief and the Answer to the Amended Complaint for Divorce filed herein is not filed by collusion with the Defendant for the for purpose of obtaining divorce, but that the cause for divorce stated in the bill of Complaint is true as stated.

/s/ Charles R. Pierce
CHARLES PIERCE

Sworn to and subscribed before me on this the 6th day of August, 1990.

/s/ Gary A. Hendrix
NOTARY PUBLIC

MY COMMISSION EXPIRES: 6/12/93

CERTIFICATE

I, Dale Robinson, Attorney at Law, do certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing to the Honorable James R. Randall Jr. Attorney At Law, at his usual address of Post Office Box 749, Gulfport, Mississippi, 39502.

Certified this the 14 day of Aug. 1990.

/s/ Dale Robinson
DALE ROBINSON

DALE ROBINSON
ATTORNEY AT LAW
1914 24th Avenue
GULFPORT, MISSISSIPPI, 39501
(601) 864-9941

DOCUMENT 7

**In the Chancery Court of the First Judicial District,
Harrison County, Mississippi**

**Shirley Pierce
v.
Charles Pierce**

Case No. 91-512

Answer to Affirmative Defense and Amended Counterclaim

IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI

FIRST JUDICIAL DISTRICT

SHIRLEY JEANETTE PIERCE — PLAINTIFF

VERSUS — CIVIL ACTION NO. 91,512

CHARLES RICHARD PIERCE — DEFENDANT

ANSWER TO AFFIRMATIVE DEFENSE AND AMENDED COUNTERCLAIM

COMES NOW the Plaintiff in the above styled and numbered cause, SHIRLEY JEANETTE PIERCE, and files this her Answer to the Affirmative Defense and Amended Counterclaim exhibited against her, and so answering would show the following, to-wit:

ANSWER TO AFFIRMATIVE DEFENSE

Counterclaimant's Affirmative Defense is denied.

ANSWER TO AMENDED COUNTERCLAIM

I.

Paragraph 1 of the Amended Counterclaim is admitted.

II.

Paragraph 2 of the Amended Counterclaim requires no response from the Plaintiff.

III.

Paragraph 3 of the Amended Counterclaim is denied.

IV.

Paragraph 4 of the Amended Counterclaim is denied.

V.

Paragraph 5 of the Amended Counterclaim is denied.

VI.

Paragraph 6 of the Amended Counterclaim is denied.

VII.

Paragraph VII of the Amended Counterclaim is denied.

VIII.

Paragraph 8 of the Amended Counterclaim is denied.

IX.

Plaintiff would deny that the Counterclaimant is entitled to any of the forms or sums of relief set forth in his concluding and un-numbered paragraphs beginning "WHEREFORE, PREMISE CONSIDERED" and ending in a prayer for general relief.

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks that this Court receive and file this, her Answer to Affirmative Defense and to the Amended Counterclaim, and that after due consideration and hearing hereon this Court will deny the relief prayed for by the Defendant/Counterclaimant.

Respectfully submitted,

/s/ Shirley Jeanette Pierce
SHIRLEY JEANETTE PIERCE

STATE OF MISSISSIPPI

COUNTY OF HARRISON

PERSONALLY CAME AND APPEARED before me, the undersigned authority in and for the jurisdiction aforesaid, the within named SHIRLEY JEANETTE PIERCE, who having been first by me duly sworn states on oath that all of the facts and matters and things set forth in the above and foregoing Answer are true and correct as therein stated, and where stated on information and belief, she verily believes same to be true.

/s/ Shirley Jeanette Pierce
SHIRLEY JEANETTE PIERCE

SWORN TO AND SUBSCRIBED before me, Notary Public, on this the 21st day of August, A.D., 1990.

/s/
NOTARY PUBLIC

MY COMMISSION EXPIRES:
May 20, 1991

CERTIFICATE OF SERVICE

I, James N. Randall, Jr., of the law firm of Randall & Geiss, do hereby certify that I have this date mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Answer to Affirmative Defense and Amended Counter-claim to the Hon. Dale Robinson, at his usual business mailing address of 1914 24th Avenue, Gulfport, Mississippi, 39501.

SO CERTIFIED this the 27th day of August, 1990.

/s/ James N. Randall Jr.
JAMES N. RANDALL, JR.

JAMES N. RANDALL, JR.
RANDALL & GEISS
ATTORNEYS AT LAW
P.O. BOX 749
GULFPORT, MS 39502
(601) 868-1013

DOCUMENT 8

**In the Chancery Court of the First Judicial District,
Harrison County, Mississippi**

Shirley Pierce
v.
Charles Pierce

Case No. 91-512

Defendant's Motion
[for forum to present argument and authority]

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT HARRISON COUNTY, MISSISSIPPI

SHIRLEY PIERCE — PLAINTIFF
VS — NO. 91,512
CHARLES PIERCE — DEFENDANT

MOTION

COMES NOW, Charles Pierce in the above styled and numbered cause by and through his attorney of record and files this Motion and request the Court to grant a forum to present additional law and argument and would show unto the court the following, to-wit:

1. That on or about May 20, 1991, after a full trial on the merits, the Court denied Shirley Pierce a divorce of and from her husband, Charles Pierce upon the statutory ground of Habitual Cruel and Inhumane Treatment.

2. That on or about May 20, 1991 after a full trial on the merits the Court declared as a finding of fact, Shirley Pierce has since on or about January, 1987 committed open and notorious adultery.

3. That the Court has taken under advisement the right of divorce of Mr. Pierce as a result of the adultery of Mrs. Pierce.

4. That Mr. Pierce is entitled to a divorce on the statutory ground of adultery.

> ". . . it is a violation of the mutual right of exclusiveness which is basic to every permanent mating, and is the foundation on which every marriage rest."
>
> Bunkley and Morse's, Amis Divorce and Separation in Mississippi, 3.09(3) at 81 (1957). See attached copy.

5. That Mr. Pierce request an opportunity to support his contention that "if the wife [as a result of adultery] be the guilty party, she will not ... be entitled to permanent alimony when there is an absence of a substantial need of financial support. Bunkley, supra; Hulett v. Hulett, 157 Miss. 476, 119 So. 581 (1928); Beacham v. Beacham, 383 So. 2d 146, 147 (Miss 1980); Russell v. Russell, 241 So. 2d 366, 367, (Miss 1970); Wood v. Wood, 495 So. 2d 506 (Miss 1986). There is not in this record evidence of a substantial need of financial support for Mrs. Pierce. Wood, supra. Furthermore, Mrs. Pierce has withdrawn her request for alimony of any type, permanent or temporary.

6. That the only financial issue remaining is the right of Mrs. Pierce if any, to any portion of the military retirement pay of

Mr. Pierce, pursuant to 10 U.S.C. 1408, the Federal Uniformed Services Former Spouse's Protection Act (FUSFSPA), herein after the Act.

7. That Mississippi law confers upon a spouse no property right in a serviceman's military retirement pay. Glenn v. Glenn, ___ So. 2d ___ (Miss. 1990) (In the Supreme Court of Miss. No. 07-CA-59364). See Attached copy.

> "As Mississippi is not a community property state ... the spouse has no vested right in the serviceman's military retirement pension."
>
> Glenn, supra.

> "A spouse's military retirement pension is a asset, considering matters such as alimony."
>
> Glenn, supra.

8. That it would be a corruption of the case law of the State of Mississippi and of the Act to declare a spouse of a retired military member is automatically entitled to a portion of the military retirement pay, regardless of fault.

9. Indisputably, there is no proof in this record of the domicile of Mr. Pierce during the term of active duty military service. And as such, there is no proof in this record that Mrs. Pierce earned any vested right in the military retirement pay in a

community property state. Because Mississippi is not a community property state the matter of whether the spouse of a serviceman has a vested right in the military retirement pension is governed by the law of the State (or states, pro rata) of domicile during the term of active duty military service, the term during which the pension is earned. Glenn, supra.; Newman v. Newman, 559 So. 2d 821 (Miss. 1990)

> "The absence of an affirmative showing that a person in military service has taken action to change his domicile at the time of entering service has taken action to change his domicile at the time of entering service, there is a presumption that the domicile remains where it was when the person entered military service."
>
> Hagle v. Leeder
> 442 S.W. 2d 908, 909
> (Tex. Civ. App. 1969)

10. The outcome determinative question is the domicile of Mr. Pierce: a community property state or a non-community property state, and whether and for how long he maintained that domicile during his active duty tenure with the military so as to determine whether the spouse has acquired a vested right, if any, in the military retirement pension.

WHEREFORE PREMISE CONSIDERED, Charles Pierce files this Motion requesting a forum, be it by way of oral argument, written brief or submission of case law to the court for review, to present argument and authority that if Mrs. Pierce is guilty of adultery she is not entitled to any portion of the military retirement pay of Mr. Pierce pursuant to the controlling law of the State of Mississippi and that the record is bare proof of the domicile of Mr. Pierce so a[s] to determine whether the spouse has acquired a vested right, if any, in the military retirement pension.

Petitioner prays for such other and general relief as in equity he may be entitled to receive.

Respectfully submitted,
CHARLES PIERCE

/s/Dale Robinson
DALE ROBINSON,
ATTORNEY FOR CHARLES PIERCE

CERTIFICATE

I, Dale Robinson, Attorney at Law, do certify that I have this day mailed, postage prepaid, a true and correct copy of the

foregoing to the Honorable J. N. Randall at his usual address of Post Office Box 749, Gulfport, Mississippi, 39502.

Certified this the 23 day of May 1991.

/s/ Dale Robinson
DALE ROBINSON

DALE ROBINSON
ATTORNEY AT LAW
1914 24th Avenue
GULFPORT, MISSISSIPPI, 39501
(601) 864-9941

DOCUMENT 9

**In the Chancery Court of the First Judicial District,
Harrison County, Mississippi**

**Shirley Pierce
v.
Charles Pierce**

Case No. 91-512

**Motion for New Trial
or in the Alternative
Judgment Notwithstanding the Judgment, to
Reconsider and Other Relief**

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT HARRISON COUNTY, MISSISSIPPI

SHIRLEY PIERCE — PLAINTIFF

VERSUS — NO. 91,512

CHARLES PIERCE — DEFENDANT

MOTION
FOR NEW TRIAL OR IN THE ALTERNATIVE
JUDGMENT NOTWITHSTANDING THE JUDGMENT,
TO RECONSIDER
AND OTHER RELIEF

COMES NOW, the Petitioner, in the above styled and numbered cause by and through his attorney of record and files his Motion to set aside the verdict and judgment entered in the above styled and numbered cause, and to enter judgment in the favor of the Petitioner or in the alternative, Petitioner moves the court to set aside the verdict and judgment entered and grant Petitioner a new trial and reconsider the evidence and Judgment and other relief and would show unto the court the following to-wit:

1. That the Judgment of the Court is contrary to the evidence.

2. That the Judgment of the Court is against the overwhelming weight of the evidence.

3. And other errors to be cited upon a hearing hereon.

Wherefore the Defendant respectfully request this Court to inquire into these matters and upon a hearing hereon grant the Petitioner the relief requested herein.

If mistaken in relief prayed for Defendant would pray for such other, further and general relief as the court deems his is, in equity, entitled to receive.

Respectfully submitted,
CHARLES RICHARD PIERCE

By: /s/ Dale Robinson
Dale Robinson
Attorney for Defendant

CERTIFICATE

I, Dale Robinson, Attorney at Law, do certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing to the Honorable J.N. RANDALL P.O. Box 749, Gulfport, Mississippi, 39501.

Certified this the 10 day of June 1991.

/s/ Dale Robinson
DALE ROBINSON

DALE ROBINSON
ATTORNEY AT LAW
1901 24th Avenue
GULFPORT, MISSISSIPPI, 39501
(601) 864-9941

DOCUMENT 10

In the Chancery Court of the First Judicial District, Harrison County, Mississippi

Shirley Pierce
v.
Charles Pierce

Case No. 91-512

Transcript of Record
[at trial]
Pages 76-145

(SHIRLEY PIERCE - Cross by Mr. Robinson)
(pp. 76-78)

. . .

MR. ROBINSON: Well--

MR. RANDALL: Your Honor, for the record, if we could shorten this trial, we will stipulate that he--that the defendant, Mr. Pierce, contributed to the daughter's education and contributed funds to her prior to her 21st birthday and we can forget all that. We will--we will--the same as Mrs. Pierce contributed. They both contributed to their daughter prior to that 21st birthday. We will stipulate to that.

MR. ROBINSON: And that portion of your complaint where you were asking for support for those years, you will withdraw?

MR. RANDALL: I'm withdrawing--we were asking for support for the daughter.

MR. ROBINSON: Okay.

MR. RANDALL: If--if you're saying that I don't--we'll withdraw that, Your Honor. We had requested that she be granted back child support when the daughter was living with her. The daughter is now 21. The daughter is over 21, rather. She's 22 years of age. I think with the amount of support that he gave the

daughter up to her to 21st birthday in her education, we withdraw our complaint and we can forget about that part of it and move onto something else. The daughter is over 21, Your Honor.

THE COURT: I understand.

MR. ROBINSON: As long as there is no issue of back child support.

MR. RANDALL: No issue on back child support. I didn't bring that up on direct examination.

MR. ROBINSON: And you are now amending your complaint to say that the only issue is any amounts that Mrs. Pierce might be entitled to since the separation or after the divorce?

MR. RANDALL: Your Honor, if we can narrow this issue down, I would narrow it down even further. I would narrow it down to say that the only thing that we're interested in in [is] this--at this particular time, like the Court is well aware of, this case has gone on since 1987.

We are requesting the Court to grant Mrs. Pierce 50 percent of Mr. Pierce's retirement. We are asking the Court to grant Mrs. Pierce the use and possession of all household goods, furnishings, utensils and appliances that she had at the time of the separation

and grant unto Mr. Pierce the exclusive use, possession and title to all household goods, furnishings, utensils that he had at the date of separation.

We are asking the Court to grant Mrs. Pierce the use and possession of her automobile. We are asking Mr. Pierce to be required to contribute a reasonable sum to Mrs. Pierce for attorneys fees. We are not and we waive our right, even if we have any-- we're not asking for alimony, either lump sum or periodic anymore. The only thing we think that this Court should do in this particular case is grant Mrs. Pierce, other than what I just asked for, is half of Mr. Pierce's retirement. If we can narrow those issues down to that part, then I think we can move along with this case. Does that satisfy you as far as the stipulation?

THE COURT: You are also asking for a divorce, I presume?

MR. RANDALL: And a divorce, yes, sir. And a divorce.

MR. ROBINSON: That's fine.

MR. RANDALL: Is that good? And we can just move right along to the meat of the--

MR. ROBINSON: May I have just one moment with my client?

THE COURT: Yes, sir.

(A BRIEF RECESS WAS TAKEN.)

MR. ROBINSON: Fine, Your Honor. We'll accept the stipulation. We have no more questions of this witness.

MR. RANDALL: No more questions, Your Honor.

THE COURT: Fine. You may step down.

MR. RANDALL: We will call Mr. Pierce, Your Honor, as an adverse witness.

THE COURT: Mr. Pierce.

* * * * *

(CHARLES PIERCE - Direct by Mr. Randall)
(pp. 99-101)

that, I've probably gone with somebody. But to say--to actually have dated somebody, I probably could count it on one hand and it was nothing more than just a social.

Q. Isn't it true that your daughter came down to see you one weekend in Florida and you weren't there because you were with some other woman?

A. Nicky has never visited me in Florida.

Q. In Meridian? How about in Meridian? Did she ever come up to Meridian and see you on the weekend and you were with your girlfriend at some function that weekend?

A. No.

Q. You don't remember that?

A. No.

MR. RANDALL: No further questions, Your Honor.

MR. ROBINSON: No questions at this time, Your Honor.

THE COURT: Thank you. You may step down, Mr. Pierce.

MR. RANDALL: We rest, Your Honor.

MR. ROBINSON: At this time, Your Honor, on behalf of Mr. Pierce, we would move to dismiss under Rule 41(b), at the close the plaintiff's case. She's failed to show a right to relief. We would bring the Court's attention to the specific failure of the plaintiff to prove the domicile of the parties during the time that the plaintiff may or may not be entitled to receive any military benefits. Also, under Rule 41(b), she's failed to make any proof

that she's entitled to a divorce under the grounds of habitual, cruel and inhuman treatment.

Furthermore, she's failed to put on any proof of the domicile of the parties at the time. Pursuant to Southern v. Glenn decided by Mississippi Supreme Court October 3rd, 1990, the Supreme Court No. 07CA59364. For this lady to be entitled to any military benefits under the federal act, she would have to prove the domicile of the parties during the time that she might be earning any benefits. The presumption is that where--well, I'll--

MR. RANDALL: May I respond to that, Judge? Of course, Your Honor, I might just for the Court record, the case that Mr. Robinson is citing is a case where they were--the parties were granted a divorce several, several years prior. And then she--and then the wife, who was granted a divorce several, several years prior to that time, comes back and says I'm entitled to part of his alimony--I mean, his retirement because I lived and a certain community law states under--under Newsom v. Newsom. That's what that--that's all that has.

So if you're coming back in on--and claiming under common--community law states, then you have to show how much time

they've lived in that community law state. We're not--we're not claiming we're entitled to the alimony solely because we lived in certain community law states. But I--but I would refer you to Exhibit 1, which both parties stipulated to as being the residence they've had since they've been married. A great portion of that time happens to be residing in community law states. We're not asking just for that.

We're asking for 50 percent of her retirement--his retirement because of a 20 year marriage, 20 years active duty. And of course, we feel like that we have proved a case on habitual, cruel and inhuman treatment over the years. I don't think you can look at one thing but you have to look at all of it. The separation occurred in 1987. No support since 1987. In my opinion, that constitutes habitual, cruel and inhuman treatment in and of itself.

MR. ROBINSON: Your Honor, may I respond just briefly? We haven't stipulated to anything about that exhibit.

THE COURT: Just a minute, counsel. Let me make a ruling on at least part of this. I'm going to grant your motion as far as grounds for divorce.

MR. ROBINSON: Yes, sir.

THE COURT: Not as anything else. But, just, I'm of the opinion that Mrs. Pierce has failed to prove her case to the necessary degree to make a prima facie case for divorce on the grounds of habitual, cruel and inhuman treatment. I will dismiss that cause of action.

MR. ROBINSON: Yes, sir.

THE COURT: That leaves your cross-bill,

* * * * *

(Motion to Reconsider, Ruling, and Discussion)
(pp. 130-145)

THE COURT: Mr. Robinson, are you ready to proceed?

MR. ROBINSON: Yes, sir, if the Court please. Your Honor, this is a divorce trial that Your Honor heard just prior to June 5th, 1991. The plaintiff in the case was Shirley Jeanette Pierce. The defendant and the counter-complainant was Charles Richard Pierce. I represent Mr. Pierce. Your Honor, you granted Mr Pierce a divorce on the grounds of adultery.

You denied Mrs. Pierce's request for a divorce on the grounds of habitual, cruel and inhuman treatment. And further, the Court granted Mrs. Pierce 50 percent of Mr. Pierce's military retirement income in accordance with the applicable provisions of 10 U.S.C.

408 [sic], commonly referred to as the Uniform Service Former Spouse Protection Act.

Your Honor, we're here today to request the Court to reconsider its findings on the issue of the military retirement pay. Your Honor, as an example, I would take your attention to September 21, 1990. And I know that Your Honor hears so many cases that it's hard to remember who you might have been before. But in September of 1990 in a divorce proceedings in Biloxi, I represented the husband and Mr. Richmond represented the wife. In that proceedings I had filed for a divorce. Mr. Richmond on behalf of his answered and simply asked for maintenance. At the end of the trial, Your Honor said Mrs. Mathis, you probably put on the best proof for a divorce but you didn't ask for a divorce so I can't give you one; and Mr. Mathis, I'm going to grant you a divorce in this matter.

Judge, basically the same thing happened in the Pierce matter. Mrs. Pierce initially asked for--in her pleadings for a divorce, back child support, child support in the future for the child, back temporary alimony and alimony in the future. During the course of the trial, Mr. Randall said first that I stipulate that there is no

back child support due; I stipulate that there is no back temporary alimony due; and I stipulate that we don't want any alimony. All we want is half of the military retirement.

And I believe the record will show at that point that I said to Mr. Randall, will you amend your complaint to those three issues and he said, yes. And shortly thereafter, I stopped my cross-examination of Mrs. Pierce.

What Mr. Randall, I believe, did according to the case law in this state and particularly the case of Diamond v. Diamond decided in 1981. That's from Hancock County. Judge Stewart was the judge on that case. Mr. Diamond asked for a divorce. Mrs. Diamond filed an answer. And the Court then granted Mrs. Diamond alimony, a car, child support. Mrs. Diamond never asked for any of that in her pleadings. And in the Diamond case cited at 403 So. 2d. 129, our Supreme Court said that although the chancellor is authorized to fix the amount of alimony, this may be done only after the question of alimony is presented to the court in proper pleadings.

And then they cite Fonderan v. Batten, 1977. In case the award of alimony--the woman only prayed for divorce, restoration

of her maiden name and for general relief. In the Pierce case, that's where Mrs. Pierce was left after her lawyer withdrew any of her claim for alimony.

The same issue basically appeared in a case called Colvin, C-O-L-V-I-N, which is cited at 487 So. 2d 814. In that case the wife had entered into a settlement which incorporated into the final decree the question of alimony, which was settled against Mrs. Colvin. And the Court said she could not thereafter go back and ask for the military retirement because she waived that in the previous agreement that her and her husband entered into.

Now, if the Court takes the position that its award of 50 percent of the military retirement is, in fact, alimony because that may be the only way the Court can do it, I would direct the Court's attention to Southern v. Glenn, which was decided in October of 1990, in which our court said: The spouse's military retirement pension is an asset which the Court, considering matters such as alimony and child support, may consider. Well, again, in this case this lady withdrew her claim for alimony. Mississippi confers on a spouse no property right in the service man's military retirement.

The Court would have to conclude that this lady had some need for alimony and there is an absence of any need in the record. Even the Court's judgment doesn't make any reference to any need for alimony, makes no reference to child support, past child support or past alimony pendente lite. It simply says that this lady is entitled to half of the military retirement. And our law doesn't grant her half of the military retirement. In fact, our law holds that she has no vested right in the military retirement. Glenn cites Newman and it cites Powers.

So I would respectfully point out to the Court that this lady, one, withdrew her right for any portion of the military retirement to be considered for alimony; and secondly, if the Court's opinion regarding this action refers to alimony, the judgment should say so. And there is an absence of proof in this record that she needs alimony.

But--and the second issue in regard to alimony, Your Honor, goes to the question of domicile. You might remember that there was a document prepared by Mrs. Pierce that listed all for the places that these two people had lived during the 20 some odd

years of their marriage. But there is no proof in the record that any of those places constituted the lawful domicile of the parties.

The record will show that Mr. Pierce entered the military while he was in the State of New York. And there is no proof in this record that he changed domicile at any time during those 20 years. And as Your Honor knows, Newman v. Newman makes it very clear that the burden would be on Mrs. Pierce to prove what the domicile was of the parties at the time she was acquiring any interest in the military retirement in a community property state.

And then Your Honor would be required--if there were different states, community property and non-community property, Your Honor would then be required to apply a pro rata share to this military retirement if the Court found that to be the facts.

Those places that these people lived, Your Honor, cannot take judicial notice that they are or are not community property states. There are only 10, as I understand, in this country, 10 community property states. Mr. Randall presented no evidence to the Court that any of those states were community property. We may think by common knowledge that Louisiana was one of them. I think they lived there a couple of years but the burden is on Mrs. Pierce

to show that they lived in a community property state at the time that she acquired any interest in this military retirement.

I would simply point out finally to the Court what our court has said about domicile of military members. A military member who is transferred about the country does not acquire a domicile if he's transferred to California, a domicile if he's transferred to Texas or a domicile if he's transferred to Tennessee because he is there under orders from his superiors and he has no choice but to go there. And the traditional rule in forming a domicile, as Your Honor knows, it must be the intent of the parties to move there and set up residence and it is their intent not to live there--it is their intent to live there, not to be there for some other purpose.

So in summary, Your Honor, we would point out to the Court that Mrs. Pierce withdrew her claim for alimony by stipulating, one, that she didn't want any alimony and, two, by amending her complaint saying she didn't want any alimony. And that's the issue of law the Court will have to grapple with. The issue of fact is that there is no evidence in this record of the domicile of the parties during that time. And the burden is upon Mrs. Pierce to establish that if she wants part of the military retirement. And for

her failure to do that, the Court is unable to determine what community property state she may have lived in that would give her a 50 percent share as the judgment says.

Your Honor, that's all we would have on this issue. We would ask the Court for permission, after Mr. Randall responds, to address the issue of the money that's in the chancellor's account and also the issue of a bond on appeal of the Court finds that it's going to not change its judgment because I think it would be beneficial to both parties if the Court would tell us how he thought we ought to handle any appeal issue.

MR. RANDALL: Your Honor, I think Mr. Robinson was correct when he said during the course of the trial that I made a stipulation n the record that I was not asked of any periodic alimony for Mrs. Pierce except half of his military retirement. Mrs. Pierce--I think the record shows that Mrs. Pierce made approximately the same thing as Mr. Pierce at that time, so therefore, as a matter of law, we were not entitled to periodic alimony but we--but we specifically stated except as alimony or any other form of property, except the 50 percent of Mr. Pierce's military retirement.

I think Mr. Robinson is correct. It's a 23-year marriage that came before this Court. And Mr. Pierce was in the military in excess of 20 years during that 23-year marriage. During that 23-year marriage, while Mr. Pierce was in the military and getting his retirement and building up his retirement, they moved in excess of 20 times. Not only throughout the United States but also, I think, to a foreign country during that time.

Mrs. Pierce, of course, did not have the opportunity through--by moving almost once a year, to build up any retirement for herself. And I think that is the reason that we have the spousal--Former Spousal Protection Act, for the simple reason that she--she aids and assists him in obtaining his retirement by her providing for him, following him throughout the country, giving up one job to go with him so that his future will be protected and their future will be protected.

This is a simple case where Mrs. Pierce had committed adultery and we admitted to that. But we admitted to it and the Court so found that the adultery occurred after the separation of the parties, which was at the request of Mr. Pierce.

Now, it wouldn't matter if Mrs. Pierce--if Mr. Pierce had a company that was in his name and for 23 years, they worked side by side in that company, in building that company and working with that company and building their retirement up. And they took the money out of that company and put it in just Mr. Pierce's name as a retirement account, an IRA account or a Keogh account or whatever, if Mrs. Pierce works and contributes equally with her in obtaining that, then she is entitled to 50 percent of it.

And I think irregardless of the grounds for divorce or the reason for the divorce, that that is a vested interest that she works 23 years of her life to earn. I think the Court was right in rendering 50 percent of the retirement. If ever anybody is entitled to 50 percent of the retirement of any military person, it's one who lives with that person for the entire length of his military retirement--military duty and is required to move approximately once a year during the entire 20 some odd year period of time.

We--I think the Court was right. I think the Court is well aware of numerous decisions affecting the--and it's too numerous for me to reiterate and regurgitate in this Court, but the Court's protect former spouses, not only by the federal law but the state

law of the State of Mississippi. And I think the Court was imminently right in its ruling.

THE COURT: Anything further?

MR. ROBINSON: Just briefly, Judge. Let me quote the sentence from the October case, Southern--Mary Jane Glenn v. James Jerry Glenn, October 3rd, 1990: "Mississippi law confers upon a spouse no property right as such in the service man's military retirement pay." Period. It doesn't matter if they were married 50 years, 60 years. She has no right conferred upon her in his retirement pay. If you want to view it like an IRA, a CD, whatever, it can only be viewed for purposes of child support or alimony. This lady asked to have all that issue withdrawn.

Again, Your Honor, until--and finally from Glenn, Mrs. Pierce would have the burden, as Mrs. Glenn did, of producing evidence that Mr. Pierce changed his domicile and further persuading the Court that the evidence, preponderance to that effect. Our problem, the Court said in Glenn, is that the Chancery Court made no finding on the matter of domicile.

While the parties in Glenn stipulated, the record we have infers that it is inconclusive, and they reversed Glenn and sent it

back and told the judge, you've got to make a finding of fact on the domicile to determine if she was entitled to any of this money, either from the record that you have or reopen the case to the issue of domicile.

The facts are in this case that Mr. Pierce joined the military in New York and the more than 20 different places that he lived, just as Mr. Randall says, there is no evidence he changed his domicile.

And service in the armed forces does not alter the general principal. A person does not acquire a domicile of choice by his presence in a place under legal compulsion because ordinarily he has not signified an intent to acquire a domicile of choice. And that's Newman v. Newman citing Welch v. Lewis, 1960 in Mississippi.

Judge, as a practical matter, this lady ought to get half of the military retirement but Congress didn't do that. And that's probably what ought to be the law but it's not. They said she can't have half of it. And it would have made it a lot easier for judges in our state and other states if they just said she automatically gets half of it. Our courts decided Congress didn't say that and this

judgment arbitrarily gives her half of it simply because it says she's entitled to half of it, not half is alimony, not alimony that is 50 percent or more in all future increases, like the Powers case was. And I think the Court should grant the judgment notwithstanding the verdict to the issue of the military retirement or to grant a new trial where the issue of domicile can be more clearly explored.

THE COURT: All right. I may eventually have to do that but it's going to be eventually.

MR. ROBINSON: I'm sorry, sir?

THE COURT: I may eventually have to hear that matter but it's going to be eventually. I'm going to deny your motion. All right. You mentioned something about money in the Court?

MR. ROBINSON: Yes, sir. There was--Mr. Pierce had paid $470 a month for approximately six to eight months; isn't that correct, Mr. Randall, that was deposited with the register? And the order says that Mrs. Pierce should get that money, the judgement, because--

THE COURT: What was that--

MR. RANDALL: Your Honor, let me--

THE COURT: The purpose of that?

MR. RANDALL: The purpose was--

MR. ROBINSON: All right. That was temporary alimony pendente lite. And we agreed to pay it into the register because there was a dispute of whether she should get it or not and there was an order entered where he paid half of his military retirement, which is 470 something dollars into the register.

THE COURT: Oh, okay. That's what that is.

MR. RANDALL: Let me explain to the Court how that came about, Your Honor. We were set for trial. We came to Court and I think Mr. Robinson asked for a continuance for some reason.

And I said, I don't want a continuance. It's been continued a long time. Of course, the Court can look at your record and see that the case has been on file for several years, this particular case. And I said, I will--I will not object to your continuance if we'll start today--this lady is entitled to 50 percent of his retirement and I want to prove that. And what I want to do, I will agree to it, if we put 50 percent of his military retirement in the register of the Court and if she is entitled to his military retirement, then she gets it back to the time that this case should have gone. And that was a stipulation into the record at that particular time.

THE COURT: I vaguely recall it. All right. Now, you're talking about also something about an appeal bond?

MR. ROBINSON: Yes, sir, Judge.

THE COURT: For a supersedeas?

MR. ROBINSON: Yes, sir. We--we would suggest to the Court, as Your Honor knows, if this case was briefed and before the justices today, it may take another 18 months to get a decision from them.

THE COURT: I think we're probably looking at, what, three years, two and a half years?

MR. ROBINSON: I was at a CLE about two months ago in which Amy Whitten said that it's about 20 months on criminal cases and about 18 months on civil cases. And--

THE COURT: You mean from today until the decision is rendered?

MR. ROBINSON: Yes, sir. Yes, sir. And they're--

THE COURT: Criminal cases are handled faster than civil cases?

MR. ROBINSON: Well, that's not--that's my memory of what she said. There is about two months longer in criminal cases

than in civil cases because there are so many of them. They've tried to, as I understand, almost put a summary docket up.

THE COURT: All right. Let me do this then: How much--how much is half of the retirement?

MR. RANDALL: Right now it's $500 and something dollars.

MR. ROBINSON: I thought it was $470. We've been paying $470 into the--

MR. RANDALL: Half of it as it exists today, Your Honor, is $500 and--I don't have the file. All I have is the--

THE COURT: Well, let's say $500.

MR. ROBINSON: Yes, sir.

THE COURT: How much is in the registry of the Court?

MR. RANDALL: I think it's already been delivered to Mrs. Pierce.

MR. ROBINSON: Wasn't there about $8,000?

THE COURT: Okay. It's already been delivered.

MR. ROBINSON: Okay.

THE COURT: I don't have to worry about it if it's already bee done. I'm going to say 24 times $500. That's $12,000. 125 percent of that would be $15,000. That would be the bond.

MR. ROBINSON: Post a bond for $15,000.

THE COURT: That's you're appeal bond for your supersedeas. That doesn't count for--

MR. ROBINSON: Yes, sir.

THE COURT: --all of that other stuff. I figure that we're talking about $12,000, roughly, for the delay of not paying the money.

MR. ROBINSON: In the--

THE COURT: Now, see, he will--he will be getting all of his retirement during the pendency of this appeal. You're not paying $170 anymore.

MR. ROBINSON: $470.

THE COURT: I mean, $470.

MR. RANDALL: And it's a little over $500 now. It's $550 or so.

THE COURT: Well, whatever--whatever it is to this point, you don't have to continue paying into the registry of the Court.

MR. ROBINSON: Yes, sir.

THE COURT: Once you perfect your appeal, your supersedeas, once you do that, you no longer have to pay anything into the--I assume you're not doing that anyway now?

MR. ROBINSON: No, it's only been a month. I don't believe anything else has been paid.

THE COURT: But it will cost you a $15,000 bond, which is 125 percent of what the Court figures will be not paid to Mrs.--

MR. ROBINSON: Yes, sir.

THE COURT: --Pierce.

MR. ROBINSON: Would the Court consider Mr. Pierce paying that into the register in lieu of--

THE COURT: I don't --this is not paid to me. I don't know how that is. All I know is I set the bond.

MR. ROBINSON: Yes, sir.

THE COURT: I don't know who it's paid to or how it's paid. I think that's up to the Supreme Court, not me.

MR. ROBINSON: No. What I was suggesting, Your Honor, that in lieu of posting a bond, Mr. Pierce would pay half of--pay the $500 into the register of this Court as safekeeping.

THE COURT: I no longer--once you appeal, I no longer have jurisdiction of the case. I only have jurisdiction to the point of setting this bond and that's 125--125 percent of the amount. So that would be the bond that you've requested to be set.

MR. ROBINSON: Yes, sir.

THE COURT: You may be excused. You present an order.

MR. RANDALL: Yes, Your Honor.

MR. ROBINSON: Thank you, Judge.

THE COURT: Yes, sir. Y'all may be excused.

IN THE CHANCERY COURT OF HARRISON COUNTY,

MISSISSIPPI

FIRST JUDICIAL DISTRICT

SHIRLEY JEANETTE PIERCE PLAINTIFF

VERSUS NO. 91,512

CHARLES PIERCE DEFEN-

DANT

CERTIFICATE

I, Jill Cox Eades, Official Court Reporter for the Eighth Chancery Court District of Mississippi, do hereby certify that I have reported the proceedings had and done in the trial of the above styled and numbered cause and that the above and foregoing 144 pages constitute a true and correct transcription of the testimony and proceedings had on trial of said cause before Honorable Jason H. Floyd, Jr., Chancellor of the Eighth Chancery Court District of the State of Mississippi, on the 20th day of May, 1991 and the 15th day of July, 1991.

I further certify that I have this date filed the original and one copy of said transcript with the Chancery Clerk of Harrison

County, Mississippi and have notified the attorneys of record and Clerk of the Supreme Court of the filing thereof.

Witness my signature, this the 27th day of November, 1991.

/s/ Jill Cox Eades
Official Chancery Court Reporter

DOCUMENT 11

In the Supreme Court of the State of Mississippi

Shirley Pierce
v.
Charles Pierce

Case No. 91-CA-00809

Motion for Rehearing

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CHARLES RICHARD PIERCE
v. NO. 91-CA-00809
SHIRLEY JEANETTE PIERCE

MOTION FOR RE-HEARING

COMES NOW, APPELLANT, Charles Richard Pierce, by and through his attorney of record, in the above styled and numbered cause, feeling aggrieved by the Judgment of this Honorable Court on the 13th. day of October 1994 and files this his Motion for Re-Hearing pursuant to the Rules of the Supreme Court of Mississippi and would show unto this Honorable Court the following, to-wit:

1. That this Honorable Court has jurisdiction of the parties and the subject matter herein.

2. That an error of law and fact was committed by this Honorable Court.

3. That the trial judge herein bought into the wrongheaded position that Shirley Pierce was **automatically** entitled to an equal division of the pension money. This Court IN THIS DECISION clearly points out that an **AUTOMATIC ENTITLEMENT** is an error in law.

4. That there is nothing in Hemsley v. Hemsley, 639 So. 2d 909 (Miss. 1994) and Ferguson v. Ferguson, 639 So. 2d 921 (Miss. 1994) that remotely suggest that being a **"faithful follower"** supports a finding of fact and conclusion of law for purpose of appellate review.

5. That the outcome determinative question is the domicile of Mr. Pierce: in other words, in what state were the parties domiciled at the time Charles earned his pension?

6. That this Motion is accompanied by a Brief in Support thereof and copies of same have been served upon opposing counsel.

WHEREFORE, Petitioner prays that this Motion for Re-Hearing and Brief in support thereof be received and filed and that this Honorable Court set this cause for hearing on the merits herein at its earliest convenience and then and there reverse its previous decision and discharge him from the obligation of the Judgment failure of Shirley Pierce to plead to prove up her right to a portion of the military retirement, and Petitioner prays that, that portion of the judgment below be reversed and rendered or in the alternative this case should be reversed and remanded for a proper determina-

tion of the parties' rights, if any, with respect to the retirement fund and the factors as outlined in Crowe v. Crowe, ____ So. 2d ____, (Miss. 1994) (In the Supreme Court of Mississippi, No. 91-CA-00553, decided August 4, 1994.); Hemsley, supra, and Ferguson, supra. IF mistaken in relief prayed for, the Petitioner would pray for such other and general relief as in equity he may entitled to receive as in duty bound, he will forever pray.

Respectfully submitted,
CHARLES PIERCE

BY /s/ Dale Robinson

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